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MANAGING MONTANA'S FLOODPLAINS

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With the passage of the Montana Flood Plain and Floodway Management Act in 1971, Montana joined the growing list of states with floodplain management programs. The Montana Legislature authorized the Board of Natural Resources and Conservation to delineate the 100-year floodway and floodplain of every watercourse in the state and to restrict the use of these designated areas to those uses that will not be seriously damaged or present a hazard to life if flooded.

The Montana Flood Plain and Floodway Management Act cannot rectify past errors, but it can help prevent future mistakes. To help reduce flood losses and provide for public safety, floodplain building regulations based upon state minimum standards have been adopted in many Montana counties, cities, and towns.

The federal government also is involved in floodplain management through the National Flood Insurance Program (NFIP), established by Congress through the National Flood Insurance Act of 1968. The NFIP allows for the purchase of low-cost flood insurance for buildings and their contents, provided that a state floodplain management program is in force.

Some people are concerned about adopting floodplain regulations because they feel the regulations are an infringement of their right to exercise free choice in the use of their property. This view neglects the harmful effects that improper land use may have on adjoining or neighboring property. It also overlooks the vast amount of tax dollars expended annually on flood-fighting, flood relief, and structural flood control. Since most streams pass through many areas of differing local jurisdictions, a coordinated approach is required to achieve equitable regulations.

This pamphlet presents questions and answers about the purpose and scope of the Montana Flood Plain and Floodway Management Act and the NFIP. Local floodplain development standards may differ slightly because of local zoning authorities.

What is a 100-year flood?

Flood flows for a stream can be calculated through a hydrologic engineering study. A 100-year flood is a flood event that is equalled or exceeded, on the average, once every 100 years. For any given year, there is a one percent chance that a 100-year flood will occur. Although a one percent chance of flooding may seem insignificant, a 100-year flood has nearly a 23 percent chance of occurring during any 25-year period.

What are floodplains?

Floodplains are those relatively flat areas bordering the banks of a watercourse that normally are dry but become inundated when heavy rains, melting snow, ice jams, or other conditions cause rivers and streams to overflow their banks.

What is the purpose of floodplain regulations?

Floodplain regulations are adopted to prevent loss of life; protect public health; prevent excessive property damage; reduce public tax expenditures for emergency operations, evacuation, and restoration; discourage the victimization of unwary land and home buyers by uninformed or unscrupulous sellers; prevent the installation of structures that limit the channel capacity and increase flood heights; prevent damage to industries, transportation, and utility systems; and prevent future unwise expansion and development in unprotected floodplains, thus reducing future expenditures for expensive protective measures such as dams, reservoirs, and dikes.

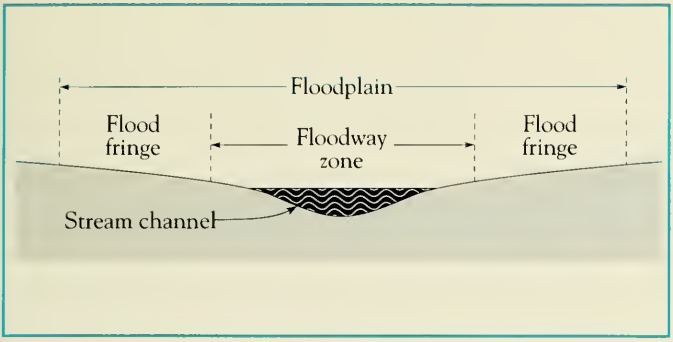
Who administers local floodplain management measures?

Both federal and state governments have established minimum floodplain development standards, but local governing bodies are responsible for administering the measures in most communities. Floodplain development permit applications can be obtained from your local floodplain administrator, or from the Floodplain Management Section of the DNRC.

Why do some floodplain delineation maps show two different areas?

When enough technical data are available, state law requires that the 100-year floodplain area be divided into two zones. The floodway zone, a higher-hazard area comprised of the stream channel and its banks, is the area considered necessary to carry flood waters downstream and generally is subject to faster water velocities and greater floodwater depths.

The flood fringe zone is a lower-hazard area outside of the floodway that would be inundated by a 100-year flood. It generally consists of the flood storage and backwater areas, is subject to low water depths and velocities, and usually is located on the outer part of the floodplain.



Are building regulations different for the two areas?

Yes. Most construction is allowed by permit in the flood fringe zone as long as the lowest floor is elevated two feet above the 100-year flood level on compacted fill, and electrical, heating, and plumbing systems are protected to minimum standards established by the Board of Natural Resources and Conservation. In the floodway zone, most new development and structures are prohibited. Soil-absorption-type septic systems are prohibited in the floodway and are allowed in the flood fringe zone only when they are reviewed and approved under laws and regulations administered by the Department of Health and Environmental Sciences or the local health board.

Exactly what is prohibited in a floodway zone?

The following new uses are expressly prohibited in floodway zones:

- buildings for living purposes, places of assembly, or permanent use by human beings;
- structures, fills, and excavations that will significantly obstruct, alter flood flows, or increase 100-year flood levels;
- manufactured homes;
- commercial buildings;
- solid waste disposal;
- soil-absorption sewage systems; and
- storage of toxic, flammable, or explosive materials.

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What is prohibited in a flood fringe zone?

In a flood fringe zone, only the following new uses are expressly prohibited:

- solid waste disposal;
- soil-absorption sewage systems unless approved by the health board; and
- storage of toxic, flammable, or explosive materials.

A permit is required for all other uses requiring structures, fill, or storage of materials and equipment.

What uses do not require permits?

All open-space uses that do not require structures, fill, or storage are allowable without permits either in a floodway or flood fringe. Examples of such uses include grazing, growing crops, forestry, parking and loading areas, and open-space recreational uses.

I have an existing house in a floodplain area. Is it affected by these regulations?

Not unless it is substantially improved or altered. An addition to an existing house could be considered an alteration since the potential flood damage is increased. In this case, a permit would be required for the addition, and floodplain management standards would be imposed.

The floodplain maps for my area do not show any flood-way zone. What kind of regulations apply in this case?

In essence, the entire floodplain will continue to be treated as a flood fringe zone until more detailed floodway delineation data become available. Thus, most development and construction would be allowable within the designated floodplain zone as long as the structure has the lowest floor elevated two feet above documented 100-year flood levels, does not cause increased flood heights and/or velocities, and is not located in that portion of the floodplain where flood-carrying capacity must be preserved and the flood hazard is greatest.

Suppose my house is destroyed by a fire or flood. Is replacement considered a substantial improvement, or is it repair?

If the cost of repair exceeds 50 percent of the actual cash value of the structure before the damage occurred, replacement is a substantial improvement and requires a permit. According to the community floodplain ordinance, the lowest floor must be elevated two feet above the 100-year flood level. If a variance to the standard is obtained, the structure may be subject to increased insurance rates.

Can I build a house or commercial building in a flood fringe zone?

Yes. A permit would be required in both cases, and certain elevation and floodplain management standards would have to be met. A house, for example, would have to be built on compacted fill so that the lowest floor elevation (including the basement) was at least two feet above the 100-year flood elevation. The fill itself would have to be up to or above the 100-year flood elevation and extend 15 feet beyond the building at that same elevation in all directions. Commercial buildings generally must meet the same standards in that all plumbing, electrical, and heating systems must be elevated or floodproofed at least two feet above the 100-year flood elevation in place of compacted fill.

Must agricultural structures meet stringent floodproofing requirements?

Agricultural buildings that have a low flood damage potential such as storage sheds, hay shelters, etc., do not need to be placed on fill or have floodproofed walls. These types of structures must, however, be anchored to a foundation to prevent them from floating away, and they must be located on high ground as far from the stream channel as possible.

If I do build in the flood fringe according to floodplain land use regulations, can I be insured against any loss caused by flooding?

Yes, if your community participates in the NFIP.

How is the National Flood Insurance Program administered?

The NFIP is administered by the Federal Insurance Administration within the Federal Emergency Management Agency (FEMA).

How is the NFIP structured?

A community qualifies for the program in two separate phases: the "Emergency" and "Regular" programs.

During the initial Emergency Program, limited amounts of flood insurance at subsidized rates become available to local property owners. At this stage, FEMA provides the community with a map called a Flood Hazard Boundary Map (FHBM) that outlines floodprone areas within the community based on the best available flood-hazard data.

Communities enter the Regular Program as a result of FEMA's detailed Flood Insurance Study. This study establishes 100-year flood elevations and a floodway for floodplain management purposes. The community is issued a detailed map called a Flood Insurance Rate Map (FIRM). Under the Regular Program, increased insurance is available

at actuarial or "True Risk" rates. Information about flood insurance rates is available from any property and casualty agent.

Can FEMA's flood maps be changed even after they have been published?

Yes. FEMA will review new technical data furnished by the appellant at any time and will revise its Flood Hazard Boundary Maps or Flood Insurance Rate Maps whenever changes are warranted.

Can a property owner appeal being included in a designated floodprone area (i.e., "A" or "AE" zone areas where flood insurance is required)?

Yes. Some property actually may be located in the floodplain or on or near a floodplain boundary, but it may be protected from the base flood because of the lot's elevation. In either case, the property owner may submit evidence to FEMA for review. If the data show that the property is safe from the base flood, FEMA will send a letter to the individual stating that the structure is not exposed to risk from the base flood and that flood insurance is not required. For more information, write to FEMA (see address on back of pamphlet).

What happens if an identified floodprone community does not qualify for the Emergency or Regular programs within the recommended time frame?

By law, federal agencies may not approve grant money, mortgage backing (FHA mortgage insurance, VA mortgage guarantees, etc.), direct loans, disaster relief in most circumstances, or any other public funds to support the purchase, construction, or improvement of property located in the community's identified floodprone areas. This ban, which applies only to the community's flood hazard areas, would remain in effect as long as the community chose not to participate in the program. The law prohibits federal benefits for buildings in floodprone areas in communities that do not require reasonable construction practices to avoid known flood risks.

Who may purchase a flood insurance policy?

Any owner of property (a building or its contents) located in a community approved for the sale of flood insurance. Under the program, tenants in eligible communities also may insure their personal property against flood loss.

How does one buy flood insurance?

After a community qualifies for the sale of flood insurance, a policy may be bought from any property and casualty insurance agent or broker licensed to do business in the state in which the property is located.

When is flood insurance required by law?

In order to obtain financing to buy, build, or improve property located in FEMA-identified floodprone areas ("A" or "AE" zone areas) of a community where flood insurance is available, flood insurance may be purchased. The law applies to any mortgage loan, grant, or other funding that is in any way federally connected—either direct financing from a federal agency (FHA, VA loans, EPA grants, etc.), or a conventional mortgage from a bank or savings and loan that is regulated or insured by the federal government. In short, flood insurance is required if (1) the community is in the flood insurance program; (2) a FEMA flood map is in effect for the community in question; (3) the improved real property that is a security for the loan or the subject of a federally insured or guaranteed loan is located in a FEMA-designated, floodprone area; and (4) the financing is made through the federal government or a federally connected lender.

Who decides whether individual properties require flood insurance?

When the loan, grant, etc., is obtained from a federal agency, the agency itself must make the decision. In the case of private institutions covered by the Act, the lender must decide. In certain cases where a lending institution is making an FHA or VA loan, the duty should be shared both by the lending institution and the federal agency.

What types of property can be insured against flood loss?

Buildings and their contents only. Almost every type of walled and roofed building that is located principally above ground can be insured. This would include a mobile home on a foundation. Also eligible are the contents of a fully enclosed building.

What kinds of property are not insurable under the program?

Gas and liquid storage tanks, wharves, piers, bulkheads, growing crops, shrubbery, land, livestock, roads, motor vehicles, etc.

What types of losses are covered?

All direct "flood" losses are covered. "Flood" is defined in the policy as a general and temporary condition of partial or complete inundation of normally dry land areas from overflow of inland or tidal waters, from the usual and rapid accumulation or runoff of surface waters from any sources, or from mudflows. ("Mudflow" is a flow of "liquid mud.") Also covered are losses resulting from land collapse caused by water activity exceeding established levels. The flood policy will not cover damage caused by a loss in progress.

What is a "loss in progress"?

A "loss in progress" is a situation where flood damage to a structure or its contents had begun prior to inception of the insurance policy.

How does one file a claim for a flood loss?

A policy holder reports the flood loss immediately to his insurance agent who, in turn, notifies the program's services agent. An adjustor then is assigned to the case.

Address of the Federal Emergency Management Agency:

FEMA
Region VIII Mitigation Division
Denver Federal Center
Building 710
Box 25267
Denver, CO 80225-0267

If you desire more information, write to:

Floodplain Management Section
Water Operations Bureau
Montana Department of Natural
Resources and Conservation
1520 East Sixth Avenue
Helena, MT 59620-2301

Or phone: (406) 444-6610

DNRC

Montana Department of
Natural Resources and Conservation